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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,815	09/19/2008	Paul D. Nizzere	10040-04 PEL-01A	1157
58898	7590	10/02/2009	EXAMINER	
LEMPIA BRAIDWOOD LLC 223 W. JACKSON BLVD. SUITE 620 CHICAGO, IL 60606			GIBSON, RANDY W	
			ART UNIT	PAPER NUMBER
			2841	
			NOTIFICATION DATE	DELIVERY MODE
			10/02/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@lempialaw.com  
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mail@lempialaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,815	<b>Applicant(s)</b> NIZZERE ET AL.	
	<b>Examiner</b> Randy W. Gibson	<b>Art Unit</b> 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-27 is/are rejected.
- 7) ☒ Claim(s) 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The title of the invention is not descriptive because it is too generic. A new title is required that is clearly indicative of the invention to which the claims are directed.

2. The use of the trademarks Pytex® and Delrin® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Flückiger et al (US # 6,566,614). See the International Search Report.

4. Claims 11 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayashi (US # 4,848,495). Hayashi discloses the claimed device (Fig.s 5 & 7) including a housing (inherent), a measuring mechanism (14), an indicator (inherent), a cylinder (322, 542), a damping piston (336, 536), and a control mechanism to control the flow of fluid defined by an opening that has a user adjustable size (Col. 4, line 64 to col. 5, line 5; Col. 5, lines 41-53). Hayashi also discloses a drain (44).

5. Claims 11 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Berkel (US # 1,457,328). Van Berkel discloses the claimed device including a housing (inherent), a measuring mechanism (p. 1, lines 86-89), an indicator (inherent), a cylinder (a), a damping piston (c), and a control mechanism to control the flow of fluid defined by an opening that has a user adjustable size (p. 1, lines 96-99). Van Berkel also discloses a drain (o)

6. Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Chatillon (US #1,889,948). Chatillon discloses the claimed apparatus including a housing (inherent), an indicator (17), a measurement mechanism (p. 1, lines 49-56), and a resistance device consisting of a friction device and an inertia device (p. 1, lines 18-27). The inertia device is the weight 24, and the friction device is the dashpot mechanism (p. 1, lines 75-89).

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7. Claims 11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bengtsson (US #2, 610,845). See p. 1, line 50 to p. 2, line 19.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (US # 4,848,495). It would have been obvious to the ordinary practitioner to use known materials to manufacture this scale and dashpot from motivated by their known suitability for their intended use. See ***MPEP*** § 2144.07.

***Conclusion***

Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A. Reichard can be reached on (571) 272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randy W. Gibson  
Primary Examiner  
Art Unit 2841

/Randy W. Gibson/  
Primary Examiner, Art Unit 2841